



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**JOHN HOGAN v. LONG BEACH MORTGAGE CO.  
CV-11-0115-PR**

**PARTIES:**

*Petitioner:* John Hogan

*Respondent:* Long Beach Mortgage Co., Washington Mutual Bank, JP Morgan Chase Bank, and Deutsche Bank

**FACTS:**

In accepting review in this matter involving two separate trustees' sales relating to Hogan's real property, the Arizona Supreme Court consolidated two cases. The facts and procedural history of the cases are essentially the same, except the chain of assignments involve different lenders. In one case, Washington Mutual noticed the trustee's sale. In the other, Deutsche Bank noticed the trustee's sale. As relevant here, the facts follow.

In 1998, Hogan purchased real property in Yavapai County, which was subject to a recorded deed of trust securing a loan from Long Beach Mortgage Co. In May 2007, Washington Mutual, Long Beach's successor in interest, recorded a notice of substitution of trustee, which appointed California Reconveyance Company ("CRC") as trustee for the deed of trust. Ultimately, the FDIC took receivership control of Washington Mutual, and Chase Bank acquired the underlying deed of trust from the FDIC. Chase then assigned the deed of trust to Deutsche Bank.

Hogan defaulted. In October 2008, he received a "Statement of Breach or Non-Performance" informing him that his loan was delinquent. He also received a notice of trustee's sale, which named Washington Mutual as the beneficiary and CRC as the trustee. A letter advised Hogan that the Office of Thrift Supervision had closed Washington Mutual, that the FDIC had been appointed receiver, and that Chase had acquired certain assets of Washington Mutual, including the right to service Hogan's property loan.

Hogan sued Washington Mutual, CRC, Chase, and Deutsche Bank ("the lenders") seeking a stay of the trustee's sale, a declaration that Washington Mutual was not authorized to foreclose on the deed of trust, and an evidentiary hearing to examine the "original note" and the instruments conferring standing on the parties to conduct the sale. He asserted no instrument or recorded deed of trust assignment existed to prove that Washington Mutual was Long Beach's successor in interest as to the loan, and that the lack of a "paper trail" substantiating transfer of the loan from Long Beach to Washington Mutual to Chase vitiated any authority Chase had to assign the deed of trust to Deutsche Bank. Chase, CRC, and Deutsche Bank agreed to stay the planned trustee's sale but moved to dismiss the complaint.

Hogan argued dismissal was not warranted because entities that seek to enforce rights under the note have to “prove they are holders of the note.” Further, because there was no evidence relating to the “transfers of the note” from Long Beach to Washington Mutual to Chase, he also claimed the court should grant partial summary judgment with regard to his injunction request. The trial court granted Chase’s motion to dismiss without explanation and denied Hogan’s partial summary judgment motion.

Hogan appealed, arguing the dismissal should be reversed because the promissory note constitutes a “negotiable instrument” subject to the Uniform Commercial Code (“the UCC”), and the existence of the deed of trust does not change that fact. He also asserted no evidence showed either Washington Mutual or Deutsche Bank is a “person entitled to enforce” the note, so they have no legal right to foreclose. The court disagreed. Even if the note is a negotiable instrument governed by the UCC, the deed of trust is not because it is not an unconditional promise or order to pay a fixed amount of money. Rather, it conveys trust property to a trustee to secure performance of a contract. The court found it unnecessary to decide whether the lenders were persons “entitled to enforce” an instrument under the UCC because a trustee’s sale does not constitute enforcement of an instrument.

Because the lenders did not bring an action on the note, but are seeking to conduct a trustee’s sale not governed by the UCC, the court affirmed the trial court’s order granting the motion to dismiss.

#### **ISSUE ADDRESSED BY THE COURT OF APPEALS:**

Can a lender foreclose its deed of trust without owning the note which the deed of trust secures?

#### **ISSUE NOT ADDRESSED BY THE COURT OF APPEALS:**

What is the legal effect of an assignment of a deed of trust without the corresponding note?

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*